

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

UNITED STATES OF AMERICA,

Plaintiff,

VS.

ROBERT McFARLAND,

Defendant.

CASE NO. 8:05CR116

AMENDED TENTATIVE FINDINGS

The Court has received the Revised Presentence Investigation Report (“Revised PSR”) and the parties’ objections thereto (Filing Nos. 90, 95, Addendum to PSR). See Order on Sentencing Schedule, ¶ 6. The Court advises the parties that these Tentative Findings are issued with the understanding that, pursuant to *United States v. Booker*, 2005 WL 50108 (U.S. Jan. 12, 2005), the sentencing guidelines are advisory.

The Defendant objects to ¶ 71, arguing that placement in criminal history category over represents the Defendant's criminal history. This argument, although posed as an objection, should be raised and will be considered as a motion for downward departure pursuant to U.S.S.G. § 4A1.3. The Court notes the Defendant's lengthy criminal history and contacts with law enforcement beginning at age 9 and continuing steadily throughout his juvenile and adult years, culminating with the instant offense. The motion for downward departure is denied.

The parties agree that the Defendant's conduct merits a minor role reduction pursuant to U.S.S.G. § 3B1.2(b). Paragraphs 13 and 14 of the PSR appear to support this contention. Therefore, the Court's tentative finding is that the objection should be granted, the adjusted offense level is 10, the total offense level is 8, the guideline range is 18-24 months, and the fine range is \$1,000-\$10,000.

IT IS ORDERED:

1. The Defendant's objection to the Revised PSR with respect to criminal history, considered as a motion for downward departure, (Filing No. 95) is denied;
2. The parties' objections to the lack of a reduction for minor role are granted;
3. Otherwise the Court's tentative findings are that the Revised PSR is correct in all respects;
4. If **any** party wishes to challenge these tentative findings, the party shall immediately file in the court file and serve upon opposing counsel and the Court a motion challenging these tentative findings, supported by (a) such evidentiary materials as are required (giving due regard to the requirements of the local rules of practice respecting the submission of evidentiary materials), (b) a brief as to the law, and (c) if an evidentiary hearing is requested, a statement describing why an evidentiary hearing is necessary and an estimated length of time for the hearing;
5. Absent submission of the information required by paragraph 4 of this Order, my tentative findings may become final; and
6. Unless otherwise ordered, any motion challenging these tentative findings shall be resolved at sentencing.

DATED this 2nd day of November, 2005.

BY THE COURT:

s/ Laurie Smith Camp
United States District Judge